



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

JGJR: 04-04

Paper No: \_\_\_\_

JESSE J. CARMICHAEL  
237 LORD ST.  
BUFFALO NY 14206

**COPY MAILED**

**APR 17 2006**

**OFFICE OF PETITIONS**

In re Application of  
Carmichael  
Application No. 10/657,340  
Filed: 8 September, 2003  
Attorney Docket No. (None)

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:  
:

ON PETITION

This is a decision on the petition filed on 27 March, 2006, to revive the above-identified application under 37 C.F.R. §1.137(a)

For the reasons set forth below, the petition under 37 C.F.R. §1.137(a) is **DISMISSED**.

**NOTES:**

- (1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.137(a) (as to unavoidable delay) or an alternative request for relief under 37 C.F.R. §1.137(b)<sup>1</sup> (as to unintentional delay) must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R.

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<sup>1</sup> Effective December 1, 1997, the provisions of 37 C.F.R. §1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 C.F.R. §1.137(b). a grantable petition filed under the provisions of 37 C.F.R. §1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 C.F.R. §1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c). (Emphasis supplied.)

§1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(a)"; and/or "Petition under 37 C.F.R. §1.137(b)";

- (2) Thereafter, there will be no further reconsideration of this matter.
- (3) The record herein suggests that Petitioner is unfamiliar with patent prosecution practice before the Office. While an inventor may prosecute an application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Petitioner may wish to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skillful preparation and prosecution. The Office cannot aid in selecting an attorney or agent.<sup>2</sup>

### BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the Notice of Fee Deficiency mailed on 2 May, 2005, with a reply due absent an extension of time on or before Monday, 4 June, 2005;
- as a result, the application was deemed abandoned after midnight 2 June, 2005;
- the Office mailed the Notice of Abandonment on 19 December, 2005;
- in the instant petition (with fee authorization), Petitioner simply avers that his former Counsel did not have sufficient funds in the deposit account, however, it was not the lack of sufficient funds but rather the former Counsel's failure to reply timely and properly to the Notice of the deficiency;
- moreover, the failure to reply to such a Notice does not constitute unavoidable delay.

Petitioner is reminded to consult the MPEP Chapter 700, specifically MPEP §711.03(c) for a discussion of the requirements as to petitions to revive under 37 C.F.R. §1.137(a) and (b).<sup>3</sup>

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<sup>2</sup> Petitioner may identify a registered practitioner in Petitioner's locale at the Office website: [www.uspto.gov](http://www.uspto.gov).

<sup>3</sup> See the Commentary at MPEP §711.03(c) at:  
[http://www.uspto.gov/web/offices/pac/mpep/documents/0700\\_711\\_03\\_c.htm#sect711.03c](http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

The facts outline by Petitioner in the instant filing suggest that Petitioner is unlikely to satisfy the showing requirement of 37 C.F.R. §1.137(a), and Petitioner's only relief likely is a petition under 37 C.F.R. §1.137(b).

### STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).<sup>4</sup>

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.<sup>5</sup> Delays in responding properly raise the question whether delays are unavoidable.<sup>6</sup> Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).<sup>7</sup>

And the Petitioner must be diligent in attending to the matter.<sup>8</sup> Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and

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<sup>4</sup> 35 U.S.C. §133 provides:

**35 U.S.C. §133 Time for prosecuting application.**

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

<sup>5</sup> Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

<sup>6</sup> See: *Changes to Patent Practice and Procedure; Final Rule Notice*, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

<sup>7</sup> See: *In re Application of G*, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

<sup>8</sup> See: *Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment*, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office *supra*.

regulatory requirements of unavoidable delay, and also, by definition, are not intentional.<sup>9</sup>))

As to the Allegation  
of Unavoidable Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(a) are the petition and fee, a showing of unavoidable delay, a proper reply, and--where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995.

With regard to the petition to revive under 37 C.F.R. §1.137(a), Petitioner has failed to satisfy the "showing" requirements, with documentary support (docket reports, file jacket cover notations, notes-to-file, etc.) under the regulation.

ALTERNATIVE VENUE

If Petitioner is unable to make a showing of unavoidable delay, Petitioner's only alternative to irretrievable abandonment is to file a petition under 37 C.F.R. §1.137(b) (state therein that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional").

Thus, Petitioner may wish to supplement the petition to plead alternatively under 37 C.F.R. §1.137(b) wherein the "showing" burden is much less onerous.

CONCLUSION

The instant petition under 37 C.F.R. §1.137(a) is dismissed.

Further correspondence with respect to this matter should be addressed as follows:<sup>10</sup>

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<sup>9</sup> Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared and/or deposited for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely prepared and/or deposited for shipment.


<sup>10</sup> On July 15, 2005, the Central Facsimile (FAX) Number will change from (703) 872-9306 to (571) 273-8300. Faxes sent to the old number will be routed to the new number until September 15, 2005. After September 15, 2005, the old number will no longer be in service and (571) 273-8300 will be the only facsimile number recognized for centralized delivery. (For further information. see: <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/cfax062005.pdf>.)

By mail: Commissioner for Patents<sup>11</sup>  
P.O. Box 1450  
Alexandria, VA 22313-1450

By FAX: IFW Formal Filings  
(571) 273-8300  
ATTN.: Office of Petitions

By hand: Mail Stop: Petition  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.



John J. Gillon, Jr.  
Senior Attorney  
Office of Petitions

Encl: Notices (Including that of 2 May, 2005  
Petition form under 37 C.F.R. §1.137(b))

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<sup>11</sup> To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at [www.uspto.gov](http://www.uspto.gov).

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

First named inventor:

Application No.:

Art Unit:

Filed:

Examiner:

Title:

Attention: Office of Petitions  
**Mail Stop Petition**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

- ☐ Small entity-fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
- ☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

**2. Reply and/or fee**

- A. The reply and/or fee to the above-noted Office action in the form of \_\_\_\_\_ (identify type of reply):

- ☐ has been filed previously on \_\_\_\_\_.
- ☐ is enclosed herewith.

- B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_.

- ☐ has been paid previously on \_\_\_\_\_.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

_____ Signature	_____ Date
_____ Typed or printed name	_____ Registration Number, if applicable
_____ Address	_____ Telephone Number
_____ Address	

- Enclosures: ☐ Fee Payment
- ☐ Reply
- ☐ Terminal Disclaimer Form
- ☐ Additional sheets containing statements establishing unintentional delay
- ☐ Other: \_\_\_\_\_

**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

- ☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.
- ☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300.

_____ Date	_____ Signature
_____ Typed or printed name of person signing certificate	

## Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/657,340	09/08/2003	Jesse J. Carmichael	

CONFIRMATION NO. 1655

SIMON, GALASSO & FRANTZ PLC.  
P.O. Box 26503  
Austin, TX 78755-0503

FORMALITIES LETTER



\*OC000000011462353\*

Date Mailed: 12/11/2003

**NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION**

**FILED UNDER 37 CFR 1.53(b)**

*Filing Date Granted*

**Items Required To Avoid Abandonment:**

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is missing.  
*A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$65 for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this letter.

**SUMMARY OF FEES DUE:**

Total additional fee(s) required for this application is \$65 for a Small Entity

- \$65 Late oath or declaration Surcharge.

Replies should be mailed to: Mail Stop Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*

T. Petro

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 3 - OFFICE COPY

# **PATENT APPLICATION FEE DETERMINATION RECORD**

Effective January 1, 2003

Application or Docket Number

10/657340  
1688-030

## **CLAIMS AS FILED - PART I**

	(Column 1)	(Column 2)
TOTAL CLAIMS	20	
FOR	NUMBER FILED	NUMBER EXTRA
TOTAL CHARGEABLE CLAIMS	20 minus 20 =	0
INDEPENDENT CLAIMS	3 minus 3 =	0
MULTIPLE DEPENDENT CLAIM PRESENT <input type="checkbox"/>		

\* If the difference in column 1 is less than zero, enter "0" in column 2

## **CLAIMS AS AMENDED - PART II**

11/09/04

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT A	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total	16	20	=
Independent	5	3	= 2
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

1, 9, 16, 21, 22

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT B	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total			=
Independent			=
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

1 9 16

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT C	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total			=
Independent			=
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

- \* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
  - \*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20."
  - \*\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3."
- The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

SMALL ENTITY TYPE ☐

OR OTHER THAN SMALL ENTITY

RATE	FEE		RATE	FEE
BASIC FEE	375.00	OR	BASIC FEE	750.00
X\$ 9=		OR	X\$18=	
X42=		OR	X84=	
+140=		OR	+280=	
TOTAL	325	OR	TOTAL	

SMALL ENTITY OR

OTHER THAN SMALL ENTITY

RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
X\$ 9=		OR	X\$18=	
X42=	88	OR	X84=	
+140=		OR	+280=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
X\$ 9=		OR	X\$18=	
X42=		OR	X84=	
+140=		OR	+280=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
X\$ 9=		OR	X\$18=	
X42=		OR	X84=	
+140=		OR	+280=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Application of:  
Jesse J. Carmichael

By the Examiner: Stephen T. Gordon

Serial No.: 10/657,340

Group Art Unit: 3612

Filed: September 8, 2003

Title: Cargo Space Organizer

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

## CERTIFICATE OF MAILING

Date of Deposit: November 4, 2004  
I hereby certify that this correspondence is being deposited  
with the United States Postal Service on the date indicated  
above, with sufficient postage for First Class Mail in an  
envelope addressed to:

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Type or Print Name Martha Rocha

Martha Rocha  
Signature

Dear Sir or Madame:

## TRANSMITTAL LETTER

Transmitted herewith for filing in the above-identified patent application are the following documents:

1. Response to Office Action (11 pgs); and
2. Confirmation Postcard.

No fee is due. However, if Applicant is in error, the Commissioner is hereby authorized to charge the fees associated with this communication or credit or overpayment to Simon, Galasso & Frantz PLC Deposit Account No. 50-1259 under Reference No. 1688.030001.

Respectfully Submitted,  
Jesse J. Carmichael

By: Raymond M. Galasso  
Raymond M. Galasso  
Reg. No. 37,832

Simon, Galasso & Frantz PLC  
P.O. Box 26503  
Austin, Texas 78755-0503  
Telephone: (512) 372-8240  
Facsimile: (512) 372-8247



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jesse J. Carmichael

Examiner: Stephen T. Gordon

Serial No.: 10/657,340

Group Art Unit: 3612

Filed: 09/08/2003

Title: Cargo Space Organizer

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

<b>CERTIFICATE OF MAILING</b>	
Date of Deposit:	<u>November 4, 2004</u>
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage for First Class Mail in an envelope addressed to:	
Mail Stop Amendment Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	
Type or Print Name	<u>Martha Rocha</u>
Signature	<u>Martha Rocha</u>

**RESPONSE TO OFFICE ACTION**

Dear Sir:

This is a response to an Office Action mailed August 4, 2004, by the United States Patent and Trademark Office (the Office). The Applicant requests reconsideration of the above-identified application in view of the amendments and remarks presented herein.

**Amendments of the Claims** begin on page 2 of this correspondence.

**Remarks** begin on page 9 of this correspondence.

**Conclusions** begin on page 11 of this correspondence.

## **AMENDMENTS – IN THE CLAIMS**

Please amend the claims as follows.

1. (currently amended) A cargo space organizer, comprising:
  - a first elongated member having a first end and a second end;
  - a second elongated member having a first end and a second end; and
  - a retention assembly attached to the first end of the second elongated member and configured for engaging a mating retention feature of the first elongated member, wherein the retention assembly enables the second elongated member to be attachable at a plurality of different mounted positions between the first and second ends of the first elongated member, wherein the retention assembly includes a release mechanism coupled to a retention member and wherein the retention member is moved from an engaged position to a disengaged position when the release mechanism is moved from an at-rest position toward a displaced position, thereby enabling the retention member to be disengaged from the mating retention feature.
2. (original) The cargo space organizer of claim 1 wherein:
  - the retention assembly includes at least one retention member that engages the mating retention feature of the first elongated member; and
  - said at least one retention member and the mating retention feature are jointly configured for enabling the second elongated member to be selectively attachable at the plurality of different mounted positions between the first and second ends of the first elongated member.
3. (currently amended) The cargo space organizer of claim 2 wherein:
  - said at least one retention member assembly includes a pin;
  - the mating retention feature includes a plurality of longitudinally-spaced holes extending through a surface of the first elongated member; and

the pin is selectively engagable with said holes.

4. (original) The cargo space organizer of claim 2 wherein:
  - said at least one retention member includes a pair of spaced apart pins;
  - the mating retention feature includes a plurality of longitudinally-spaced paired holes extending through a surface of the first elongated member; and
  - the pair of spaced apart pins are selectively engagable with said paired holes.
5. (canceled)
6. (currently amended) The cargo space organizer of claim 1, further comprising:
  - a first extension member repositionably attached to one of said ends of the first elongated member, thereby enabling an overall length of the first elongated member to be selectively increased or decreased; and
  - a second extension member repositionably attached to the second end of the second~~first~~ elongated member, thereby enabling an overall length of the second elongated member to be selectively increased or decreased.
7. (original) The cargo space organizer of claim 6, further comprising:
  - means for enabling the first and the second extension members to be independently repositioned and secured relative to a longitudinal axis of the respective elongated member.
8. (currently amended) The cargo space organizer of claim 7 wherein said means includes:
  - a spring-loaded pin mounted on each one of said elongated members; and
  - a plurality of spaced-apart holes extending through a surface of each one of said extension members and ~~are~~ selectively engagable by the respective spring-loaded pin.
9. (currently amended) A cargo space organizer, comprising:

a first elongated member having a first end and a second end;  
a second elongated member having a first end and a second end, wherein the second elongated member is repositionably attached at the first end thereof to the first elongated member, ~~and~~ wherein the second end of the second elongated member is repositionable between a plurality of mounted positions between the first and second ends of the first elongated member, wherein the second elongated member includes at least one retention member configured for enabling the second elongated member to be repositionably attached at the first end thereof to the first elongated member, wherein said at least one retention member is attached to the first end of the second elongated member and is configured for engaging a mating retention feature of the first elongated member and wherein said at least one retention member and the mating retention feature are jointly configured for enabling the second elongated member to be attachable at a plurality of different mounted positions between the first and second ends of the first elongated member; ~~and~~  
a plurality of extension members, wherein a first one of said extension members is repositionably attached to the first end of the first elongated member, wherein a second one of said extension members is repositionably attached to the second end of the second elongated member, and wherein each one of said extension members is repositionable between a plurality of respective positions thereby enabling an overall length of the respective elongated member to be selectively increased or decreased; ~~and~~  
a release mechanism coupled to said at least one retention member, wherein said at least one retention member is moved from an engaged position to a disengaged position when the release mechanism is moved from an at-rest position toward a displaced position, thereby enabling said at least one retention member to be disengaged from the mating retention feature.

10. (original) The cargo space organizer of claim 9, further comprising:

means for enabling each one of said extension members to be independently repositioned and secured relative to a longitudinal axis of the respective elongated member.

11. (currently amended) The cargo space organizer of claim 10 wherein said means includes:  
a spring-loaded pin mounted on each one of said elongated members; and  
a plurality of spaced-apart holes extending through a surface of each one of said extension members and ~~are~~ selectively engagable by the respective spring-loaded pin.

12. (cancelled)

13. (currently amended) The cargo space organizer of claim 912 wherein:  
said at least one retention member includes a pin;  
the mating retention feature includes a plurality of longitudinally-spaced holes extending through a surface of the first elongated member; and  
the pin is selectively engagable with said holes.

14. (currently amended) The cargo space organizer of claim 912 wherein:  
said at least one retention member includes a pair of spaced apart pins;  
the mating retention feature includes a plurality of longitudinally-spaced paired holes extending through a surface of the first elongated member; and  
the pair of spaced apart pins are selectively engagable with said paired holes.

15. canceled

16. (currently amended) A cargo space organizer, comprising:

- a first elongated member having a first end and a second end;
- a second elongated member having a first end and a second end;
- a retention assembly attached to the first end of the second elongated member and configured for engaging a mating retention feature of the first elongated member, wherein the retention assembly enables the second elongated member to be attachable at a plurality of different mounted positions between the first and second ends of the first elongated member, wherein the retention assembly includes at least one retention member that engages the mating retention feature of the first elongated member, and wherein said at least one retention member and the mating retention feature are jointly configured for enabling the second elongated member to be attachable at a plurality of different mounted positions between the first and second ends of the first elongated member; and
- a plurality of extension members, wherein a first one of said extension members is repositionably attached to the first end of the first elongated member, wherein a second one of said extension members is repositionably attached to the second end of the second elongated member, and wherein each one of said extension members is repositionable between a plurality of respective positions thereby enabling an overall length of the respective elongated member to be selectively increased or decreased, wherein the mating retention feature includes a plurality of longitudinally-spaced holes extending through a surface of the first elongated member and wherein a pin of the retention assembly is selectively engagable with said holes; and
- a release mechanism coupled to the pin, wherein the pin is moved from an engaged position to a disengaged position when the release mechanism is moved from an at-rest position toward a displaced position..

17. (canceled)

18. (canceled)

19. (canceled)

20. (currently amended) The cargo space organizer of claim 169, further comprising:  
means for enabling said extension members to be independently repositioned relative to a longitudinal axis of the respective elongated member and secured in place on the respective elongated member.

21. (new) A cargo space organizer, comprising:

- a first elongated member having a first end and a second end;
- a second elongated member having a first end and a second end;
- a retention assembly attached to the first end of the second elongated member and configured for engaging a mating retention feature of the first elongated member, wherein the retention assembly enables the second elongated member to be attachable at a plurality of different mounted positions between the first and second ends of the first elongated member;
- a first extension member repositionably attached to one of said ends of the first elongated member, thereby enabling an overall length of the first elongated member to be selectively increased or decreased;
- a second extension member repositionably attached to the second end of the second elongated member, thereby enabling an overall length of the second elongated member to be selectively increased or decreased; and
- means for enabling the first and the second extension members to be independently repositioned and secured relative to a longitudinal axis of the respective elongated member, wherein said means includes a spring-loaded pin mounted on each one of said elongated members and a plurality of spaced-apart holes extending through a

surface of each one of said extension members and selectively engagable by the respective spring-loaded pin.

**22. (new) A cargo space organizer, comprising:**

- a first elongated member having a first end and a second end;**
- a second elongated member having a first end and a second end, wherein the second elongated member is repositionably attached at the first end thereof to the first elongated member and wherein the second end of the second elongated member is repositionable between a plurality of mounted positions between the first and second ends of the first elongated member;**
- a plurality of extension members, wherein a first one of said extension members is repositionably attached to the first end of the first elongated member, wherein a second one of said extension members is repositionably attached to the second end of the second elongated member, and wherein each one of said extension members is repositionable between a plurality of respective positions thereby enabling an overall length of the respective elongated member to be selectively increased or decreased;**
- and**
- means for enabling each one of said extension members to be independently repositioned and secured relative to a longitudinal axis of the respective elongated member, wherein said means includes a spring-loaded pin mounted on each one of said elongated members and a plurality of spaced-apart holes extending through a surface of each one of said extension members and selectively engagable by the respective spring-loaded pin.**

### **REMARKS**

The Application has been carefully reviewed in light of the Office Action mailed August 4, 2004 by the Office. At the time of this Office Action, Claims 1-20 were pending in the Application, of which Claims 1-4, 6-14 and 16-20 were rejected and Claims 5 and 15 were objected to. In order to advance prosecution of this case, Claims 1, 3, 6, 8, 9, 11, 13, 14, 16 and 20 have been amended to overcome the rejections asserted by the Office, to correct various informalities and to state more clearly what the Applicant claims as his invention. Additionally, claims 5, 12, 15, 17, 18 and 19 have been canceled and new Claims 21 and 22 have been presented. It is believed that the amended claims do not involve any introduction of new matters, whereby entry is believed to be in order and is respectfully requested. The Applicant respectfully requests reconsideration and favorable action in this case.

The following actions were taken or matters raised: (I) Claims 3, 6-8, 11 and 18-20 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention; (II) Claims 1-4, 6-7, 9-10, 12-14 and 16-18 are rejected under 35 U.S.C. § 102(b) as being anticipated by Owens (US Patent No. 5,971,685); (III) Claims 5 and 15 were objected to as being dependent upon a rejected base claim; and (IV) Claims 8, 11, and 19-20 have been stated as allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims.

**I. Claims 3, 6-8, 11 and 18-20 Rejected Under 35 U.S.C. § 112, Second Paragraph.**

Claims 3, 6-8, 11 and 18-20 have been amended to overcome the cited rejections under 35 U.S.C. § 112, second paragraph.

**II. Objected To Claims**

Claim 1, which is the immediate base claim of Claim 5, has been rewritten to include the limitations of Claim 5. Claim 9, which is the immediate base claim of Claim 12 and the intervened base claim of Claim 15 dependent upon Claim 12, has been rewritten to include the limitations of Claims 12 and Claim 15.

**III. Allowable Claims**

New Claim 21 includes all of the limitations of Claim 8, its base and any intervening claims. New Claim 22 includes all of the limitations of Claim 11, its base and any intervening claims. Claim 16, which is the base claim of Claim 19 and intervening Claims 17 and 18, has been rewritten to include the limitations of Claims 17-19.

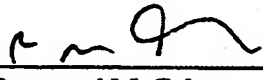
**IV. Amendments to Miscellaneous Other Claims**

Other claims have been amended to correct claim dependencies in accordance with the amended claims presented herein.

### CONCLUSION

The Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for reasons clearly apparent, the Applicant respectfully requests full allowance of all pending claims. If there are any matters that can be discussed by telephone to further the prosecution of the Application, the Applicant invites the Examiner to contact the undersigned at 512-372-8240 at the Examiner's convenience.

Respectfully Submitted,  
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